

The Dry Cleaner Environmental Response Fund Program

RR #631

DRY CLEANER ENVIRONMENTAL RESPONSE FUND PROGRAM

APRIL, 2003

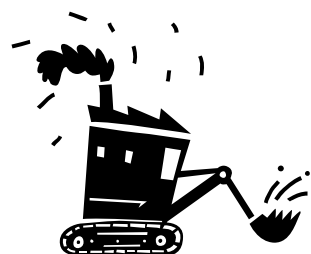
The following summarizes the Dry Cleaner Environmental Response Fund (DERF) Program as implemented by the Wisconsin Department of Natural Resources (DNR). Chapter NR 169 is the rule that establishes the criteria for reimbursement from the Dry Cleaner Environmental Response Fund (Fund). This fund was designed by the fabric care industry to help dry cleaners pay for environmental cleanup costs as a result of a discharge of a dry cleaning solvent at a dry cleaning facility. Cleanups conducted under this program must comply with the DNR's NR 700 cleanup rule series. A number of specific fact sheets provide more detailed information on the topic areas highlighted in this summary.

This summary only highlights significant components of the program. Consult ch. NR 169 for the exact rule language and more detail. A copy of the complete rule can be obtained at no cost by calling 1-800-367-6076 (long distance in-state) or (608) 264-6020 (local or out-of-state). Our Web site also contains ch. NR 169, as well as other information on this and other Remediation and Redevelopment programs and Community Financial Assistance programs. Check it out at www.dnr.state.wi.us/org/aw/rr or www.dnr.state.wi.us/org/caer/cfa.

Eligibility *Is the Program for Me?* Owners and operators of dry cleaning facilities (and their agents) are eligible for reimbursement from the Fund. Operators are persons who hold the license to operate the facility. Owners are persons who own or have possession of a dry cleaning facility and who receive or received direct compensation from the operation of the facility. In addition, a property owner of a licensed facility (i.e. a facility in operation after October 14, 1997), is eligible for reimbursement from the Fund. *Please note that a property owner of a site that once housed a dry cleaning facility is not eligible for reimbursement from this fund unless the facility held a license under s. 77.996, Wis. Stat. See publication #RR-632 for more information on eligibility and eligible costs.*

Response Actions *Complying with the Cleanup Requirements:* The ch. NR 700 rule series addresses three types of response actions: **immediate actions**, **interim actions**, and **remedial actions** (including site investigations). In order for costs to be eligible for reimbursement, the NR 700 rule series must be complied with, including Ch. NR 706, which requires immediate notification of a discharge of hazardous substances to the environment. **See publication #RR-633 for more information on response actions.**

Immediate Action means: a response action taken within a short period of time after the discharge of a hazardous substance occurs, or after the discovery of a hazardous substance discharge or environmental pollution. The purpose of the action is to halt the discharge, contain or remove discharged hazardous substances, or remove contaminated environmental media, to restore the environment to the extent practicable and to minimize the harmful effects of the discharge to air, lands and waters of the state and to eliminate any imminent threat to public health, safety or welfare that may exist.



Interim Action Definition: a response action taken to contain or stabilize a discharge of a hazardous substance, in order to minimize any threats to public health, safety or welfare or the environment, while other response actions



Wisconsin Department of Natural Resources
PO Box 7921
Madison, WI 53707

are being taken or planned for the site or facility. A site investigation means an investigation undertaken in conformance with ch. NR 716.

Remedial Action means: a response action, other than immediate or interim action, taken to control, minimize, restore or eliminate the discharge of hazardous substances or environmental pollution so that the hazardous substance or environmental pollution does not present an actual or potential threat to public health, safety or welfare or the environment.

Funding **The Ins and Outs of the Fund:** About \$1.2 million dollars are collected annually for this fund. The statute requires that the fund be distributed to the various classes as described below. Because we expect the demand for the fund will exceed the monies collected, the rule contains language for prioritizing reimbursements as described below. Fund availability will **not** determine when response actions are required. The current statute requires that all applications for facilities that ceased operation prior to September 1, 1998 must be submitted to the department by August 30, 2005. Reimbursement applications for all other sites are required to be submitted by August 20, 2008.



Past Costs: Applications for past costs (defined as eligible costs incurred between January 1, 1991 and October 14, 1997) were due to the department by April 1, 2001. Seventeen applications were received and more than \$500,000 were reimbursed for those actions.

Immediate Actions: The statute requires that 9.7% of the Fund be reserved on an annual basis for immediate action reimbursements. These reimbursements will be made based on the date the application is received by the department.

Interim Actions: The original statute included a requirement that 46% of the funds be set aside on an annual basis for interim action reimbursements. That statute has since been repealed, and interim actions are reimbursed similar to remedial response actions.

Site Investigations and Remedial Actions: Site investigations and remedial actions are anticipated to have the highest fiscal impact on the Fund. For all response actions except immediate actions, DNR categorizes sites into a high, medium or low risk category, when the applications are received. Funds are distributed between these risk categories in the following formula: 25% for high risk sites, 60% for medium risk sites, and 15% for low risk sites. At the end of each fiscal year, unallocated funds set aside for one category may be transferred to another category where there are more claims than funds available.

Deductibles: The **maximum** award for response actions is \$500,000 per facility. The following deductibles are assessed for each facility seeking reimbursement of response action costs.

<u>Eligible Costs</u>	<u>Deductible</u>
≤\$200,000	\$10,000
\$200,000 - \$400,000	\$10,000 + 8% of the amount > \$200,000
>\$400,000	\$26,000 + 10% of the amount > \$400,000

What about Closed Facilities? Facilities that are closed at the time that an application is submitted for reimbursement are eligible for reimbursement assuming that an eligible applicant has conducted the response actions and is requesting the reimbursement. While the original statute included a provision for closed facilities to pay a significantly higher deductible prior to reimbursement, the latest program revisions eliminated the higher deductible requirement for closed facilities. **All applications for facilities that ceased to operate before September 1, 1998, must be submitted no later than August 30, 2005.**

Contracting Hiring a Consultant - What you should know! Sec. NR 169.21 details the requirements for hiring consultants and contractors to conduct remedial response activities. The owner or operator must select a consultant using a **qualification based selection (QBS)** system which includes at least 3 competitive proposals for the interim action, site investigation (including the development of the remedial options report), and the selection of remedial action activities (including remedial action design and implementation). Proposals and cost estimates must include a clear description of the consultant and contract services costs, including a total cost estimate for all services included in the proposal. Some services must be estimated on an hourly basis. **See publication #RR-635 for more information on hiring a contractor and other contracting requirements.**

If the consultant selected is not the lowest cost proposal, the owner or operator shall justify the selection to the department's satisfaction and obtain the department's approval for that selection before entering into a contract with that consultant. The proposal cost estimates provided by the selected consultant shall be the maximum paid by the department for the response action activities. Costs incurred as a result of a change order may be reimbursed from the Fund if the department finds the changes and costs reasonable.



Consultants must certify that they will comply with the requirements of ch. NR 169 and the NR 700 rule series. They must also include a certification of insurance from an agent licensed to do business in Wisconsin that:

- the consultant maintains coverage for errors and omissions and coverage for comprehensive general liability, including pollution impairment liability, for a minimum of \$1,000,000 per claim and a minimum of \$1,000,000 in annual aggregate claims;
- the policy is an occurrence based policy or is a claims made policy with a 3 year extended reporting period; and
- the policy has a maximum deductible per claim of \$25,000 (if the deductible amount is more than \$25,000, the consultant must furnish proof of financial responsibility acceptable to the department for the amount of the deductible)

Prevention Facility Requirements to minimize spills! There a number of specific statutory requirements related to preventing future releases of dry cleaning solvents to the environment. Some of these provisions are specific to new facilities. For example, owners or operators of facilities constructed after October 14, 1997 must have implemented enhanced pollution prevention measures specified in the statute to be eligible for reimbursement from the Fund. Other requirements relate to how solvents are transferred to dry cleaning equipment. And still others relate to the use of pollution prevention measures for spills that occur after a cleanup has been reimbursed at a facility. **See publication #RR-636 for more information on pollution prevention requirements.**

Information **More Info:** New fact sheets are available for specific questions you may have on eligibility requirements, changes in the statutes, and other aspects of the program. Call (800) 367-6076 (in-state) or (608) 264-6020 (local or out-of-state) or find them on our web site at www.dnr.state.wi.us/org/aw/rr or www.dnr.state.wi.us/org/caer/cfa.

This document may contain some information about certain state statutes and rules but does not necessarily include all of the details found in the statutes/rules. Readers should consult the actual language of the statutes/rules to answer specific questions. The Wisconsin Department of Natural Resources provides equal opportunity in its employment, programs, services, and functions under an Affirmative Action Plan. If you have any questions, please write to Equal Opportunity Office, Department of Interior, Washington, D.C. 20240 This publication is available in alternative format upon request. Please call 608-267-3543 for more information

Figure 1
Flowchart for the Dry Cleaner Environmental Response Program - October, 2001

Prepared by the Bureau for Remediation and Redevelopment

